

STATE OF MINNESOTA
IN COURT OF APPEALS

A22-0934



Kaelin McConnell,

Relator,

vs.

ORDER OPINION

Federal Reserve Bank of Minneapolis,

Respondent,

Department of Employment and

Economic Development

File No. 48585767-2

Department of Employment and Economic
Development,

Respondent.

Considered and decided by Segal, Chief Judge; Reyes, Judge; and Slieter, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Relator Kaelin McConnell seeks reversal of a decision by an unemployment-law judge (ULJ) that McConnell was ineligible for unemployment benefits because she was discharged for employment misconduct. Respondent Minnesota Department of Employment and Economic Development (DEED) supports reversal. Respondent-employer Federal Reserve Bank of Minneapolis (FRB) has not appeared in the appeal.

2. FRB employed McConnell until January 21, 2022, when she was discharged for failing to comply with FRB's COVID-19 vaccination policy. FRB had granted

McConnell a religious accommodation from the policy while its workforce was working remotely. But as FRB prepared to return its workforce to the office, it revisited McConnell's accommodation and determined that continuing it would be unduly burdensome.

3. McConnell was denied unemployment benefits, administratively appealed, and participated in a hearing before the ULJ. When asked why her religious beliefs prevented her from getting a COVID-19 vaccination, McConnell testified to concerns about the vaccine being "in its early stages, and it's not tested," and to her decision that it was a "risk I cannot take." The ULJ followed up, stating that it "sounds like you had some concerns about how it could affect you medically" and asked McConnell whether she had talked to her doctor. McConnell responded that she had not because it was more of a "spiritual thing" and "religious belief." She explained that she "prayerfully considered whether it was something I can do."

4. Questioned further about her religious practices, McConnell testified that she is a Christian and belongs to the Relevant Life Church, which has not taken a position on COVID-19 vaccinations. But she also testified to her belief that "you read the Bible for yourself, you pray for yourself." She quoted Bible verses about avoiding defilement of the body. She testified that she does believe in some medical interventions but that she "prayerfully consider[s] things."

5. FRB's vice president of human resources and inclusion testified on its behalf. The vice president testified to her understanding "that [McConnell] has this strong religious belief . . . that God will, has taken care of her, and will continue to do so." The vice

president also testified that McConnell’s religious belief “was never in question for us, and it’s still not in question.” FRB had conducted personal interviews with employees seeking religious exemptions from the vaccine requirements, and the vice president testified that “we did feel that [McConnell’s religious belief] was sincere . . . , based on the answers to the questions that she provided.”

6. Following the hearing, the ULJ issued a decision determining that McConnell had committed employment misconduct by failing to comply with FRB’s COVID-19 vaccination policy, that her refusal of the vaccine was not based on sincerely held religious beliefs, and that she was therefore ineligible for benefits. The ULJ found: “It is credible that McConnell considered certain health factors when she declined a COVID-19 vaccine but was less credible that she was prevented from receiving the vaccine because of sincerely held religious beliefs.” And the ULJ found:

The most likely explanation is that McConnell would have received the COVID-19 vaccine if it had been around for a longer period of time and undergone additional testing. This is not a religious or medical reason. The preponderance of the [evidence] shows that McConnell’s decision was personal in nature and not based upon sincerely held religious beliefs.

7. We may affirm the ULJ’s decision or remand for further proceedings, or we may reverse or modify the ULJ’s decision “if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are,” as relevant here, “in violation of constitutional provisions” or “unsupported by substantial

evidence in view of the hearing record as submitted.” Minn. Stat. § 268.105, subd. 7(d) (2022).

8. An applicant is ineligible for unemployment benefits if she was discharged because of employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2022). Employment misconduct is defined as “any intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.” *Id.*, subd. 6(a) (2022). “[A]n employee’s decision to violate knowingly a reasonable policy of the employer is misconduct.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 806 (Minn. 2002). But even when the definition of misconduct is satisfied, a decision denying unemployment benefits may be subject to reversal if it violates constitutional rights. Minn. Stat. § 268.105, subd. 7(d)(1).

9. A decision denying unemployment benefits infringes on an applicant’s free-exercise rights under the First Amendment if the employee was forced to choose between her sincerely held religious beliefs and her employment. *See Frazee v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829, 832 (1989); *see also Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981) (explaining that “a person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program”). Such an infringement is subject to strict scrutiny and thus can only be

sustained upon demonstration that it is the least restrictive means to meet a compelling government interest. *Thomas*, 450 U.S. at 718.

10. The issue of whether employment misconduct is based on sincerely held religious beliefs is a fact issue. *See id.* at 716 (instructing that “function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion”); *see also In re Welfare of T.K.*, 475 N.W.2d 88, 91 (Minn. App. 1991) (reviewing for clear error district court finding that religious belief was sincerely held). The ULJ’s factual findings should not be disturbed if the evidence in the record “reasonably tends to sustain those findings.” *Schmidgall*, 644 N.W.2d at 804.

11. The ULJ found that McConnell committed misconduct by violating FRB’s COVID-19 vaccination policy and that her decision to not get vaccinated was motivated by personal rather than religious reasons. McConnell argues that the ULJ erroneously required that her reasons for not getting the vaccination lack any secular aspect, which she asserts is contrary to federal caselaw. *See, e.g., Wiggins v. Sargent*, 753 F.2d 663 (8th Cir. 1985) (rejecting notion that “an idea or belief cannot be both secular and religious”). McConnell also argues, and DEED has conceded, that the ULJ’s finding is not supported by substantial evidence.

12. We agree that the record lacks substantial evidence to support the ULJ’s decision. Although McConnell testified to concerns regarding the safety of the COVID-19 vaccine, she repeatedly tied those concerns back to her faith. She testified that she did not contact her doctor about her concerns because it was more of a “spiritual thing” and

“religious belief.” And she testified that, although she believes in some medical interventions, she “prayerfully consider[s] things.” The ULJ found McConnell’s testimony regarding safety concerns credible and rejected her testimony regarding her religious beliefs as not credible. “When the credibility of a witness testifying in a hearing has a significant effect on the outcome of a decision, the unemployment law judge must set out the reason for crediting or discrediting that testimony.” Minn. Stat. § 268.105, subd. 1a(a) (2022). The ULJ offered no reason for crediting only part of McConnell’s testimony, and we can discern none. Moreover, although not dispositive, we are mindful that FRB interviewed McConnell and determined that McConnell’s refusal of the vaccine was based on sincerely held religious beliefs. Considering the totality of the record, we conclude that it does not “reasonably tend[] to sustain” the ULJ’s findings. *Schmidgall*, 644 N.W.2d at 804.

13. Because substantial evidence does not support the ULJ’s finding that McConnell’s refusal of the vaccine was not based on sincerely held religious beliefs, we reverse the ULJ’s decision determining McConnell ineligible for unemployment benefits.

IT IS HEREBY ORDERED:

1. The ULJ’s decision is reversed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, *res judicata*, or collateral estoppel.

Dated: February 24, 2023

BY THE COURT



Judge Randall J. Slieter

SEGAL, Chief Judge (dissenting)

I respectfully dissent from the court’s decision to reverse the factual determination of the unemployment-law judge (ULJ) that relator Kaelin McConnell’s refusal of a COVID-19 vaccination was not based on sincerely held religious beliefs.

As the majority opinion notes, the issue of whether employment misconduct is based on sincerely held religious beliefs is a fact issue. *See Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981) (instructing that the “function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion”); *see also In re Welfare of T.K.*, 475 N.W.2d 88, 91 (Minn. App. 1991) (reviewing for clear error the district court’s finding that religious belief was sincerely held). “[O]nly beliefs rooted in religion” are protected by the Free Exercise Clause; “[p]urely secular views do not suffice.” *Frazee v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829, 833 (1989) (quotation omitted). And the United States Supreme Court has recognized the “difficulty of distinguishing between religious and secular convictions and in determining whether a professed belief is sincerely held.” *Id.* The Court further has stated: “States are clearly entitled to assure themselves that there is an ample predicate for invoking the Free Exercise Clause.” *Id.*

This court defers to the factual findings of a ULJ if the record “reasonably tends to sustain those findings.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002); *see also* Minn. Stat. § 268.105, subd. 7(d)(5) (2022). Relying on this principle, this court has repeatedly affirmed ULJ findings that unemployment applicants’ refusals to comply

with employer vaccination policies were not motivated by religious beliefs. *See Larson v. Minn. State Coll. Se.-Winona*, No. A22-0689, 2023 WL 193984, at *4 (Minn. App. Jan. 17, 2023); *Logue v. Olympus Am., Inc.*, No. A22-0282, 2022 WL 3581809, at *2-3 (Minn. App. Aug. 22, 2022); *Potter v. St. Joseph’s Med. Ctr.*, No. A18-0736, 2018 WL 6729836, at *4 (Minn. App. Dec. 24, 2018).¹

Although the record in this case is similar to those we have addressed in previous cases, relator and respondent Minnesota Department of Employment and Economic Development (DEED) urge—and this court reaches—a different result. Relator and DEED rely on an Eighth Circuit decision to argue that the ULJ’s decision is unsupported by substantial evidence because McConnell testified to both secular and religious reasons for refusing the COVID-19 vaccine. *See Wiggins v. Sargent*, 753 F.2d 663, 666-67 (8th Cir. 1985) (explaining that a belief can have both religious and secular bases).² Critically, however, the ULJ rejected as *not credible* McConnell’s testimony regarding the religious reasons for her refusal of the COVID-19 vaccination. In other words, the ULJ found that

¹ These opinions are nonprecedential pursuant to Minn. R. Civ. App. 136.01, subd. 1(c) (2022).

² Although *Wiggins* is not binding on this court, it may be persuasive. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003) (recognizing that court of appeals is “bound by decision[s] of the Minnesota Supreme Court and the United States Supreme Court,” but not “by any other federal courts’ opinion[s]” though such opinions “are persuasive and should be afforded due deference”). *Wiggins* stands for the unremarkable proposition that decisions motivated wholly or partially by sincerely held religious beliefs are entitled to free-exercise protection. 753 F.2d at 666 (noting district court’s apparent mistaken impression that “an idea or belief cannot be both secular and religious”). Put another way, only “purely secular views do not suffice.” *Frazee*, 489 U.S. at 833.

McConnell's reasons for refusing the vaccine were not based on a sincerely held religious belief but on secular reasons. That finding, if supported by the record, leads to the conclusion that there was no violation of McConnell's free-exercise rights. *See Frazee*, 489 U.S. at 833.

The record here contains substantial evidence supporting the ULJ's credibility determination. For example, in response to the ULJ's question about why her religious beliefs prevented her from getting the COVID-19 vaccine, McConnell testified that it was "[b]ecause the COVID vaccine was in its early stages, and it's not tested. The health risk associated with it from my . . . demographic seemed like [a] risk I cannot take." She acknowledged that she has no religious objection to vaccines in general and that she received a tetanus vaccine in 2021. McConnell explained that she took the tetanus vaccine because "the tetanus shot has been around for a hundred years, and there's . . . plenty of public data, and history to back up its validity whereas the COVID-19 one is fairly new. Just this last year."

McConnell testified that part of her concern over the vaccine was the possible side effects. She testified that she did research online and spoke with a medical professional about the safety of the vaccine. McConnell also noted that her grandmother had had a stroke after receiving a COVID-19 booster. She noted that, ultimately,

as a 27-year-old healthy female that getting COVID versus getting the shot that has possible side effects [of] stroke, heart attacks, blood clots, I just felt . . . I'd take my chances with

COVID over the possible side effect[s from the vaccine]. Of course, I don't believe it is fully natural either.

With regard to her religious beliefs, McConnell testified that she will pray about everything she does and characterized her reasons for not trusting the COVID-19 vaccine as “more of a spiritual thing. Like a religious belief.” This type of testimony can support a conclusion that McConnell's motivation for refusing the COVID-19 vaccine was mixed, including both secular and religious reasons. My issue with that approach, however, is that the ULJ made a credibility determination that McConnell's reasons for refusing the vaccine were secular, not religious. Rightly or wrongly, First Amendment jurisprudence leaves to the fact-finder the task of determining whether an action is the result of a *sincerely held religious belief* and we defer to findings of fact as long as they are supported by the record. To conclude otherwise would require that we accept—at face value—an employee's statement that they were motivated by a religious belief. While that might be a preferable approach from the standpoint of keeping the courts out of the business of trying to assess the sincerity of a person's religious beliefs, that is not the current legal standard.

In this case, the ULJ made a credibility determination, and that determination is supported by substantial evidence in the record. The ULJ also explained the reasons for making that credibility determination. *See* Minn. Stat. § 268.105, subd. 1a(a) (2022) (providing that “[w]hen the credibility of a witness testifying in a hearing has a significant effect on the outcome of a decision, the [ULJ] must set out the reason for crediting or discrediting that testimony”). The ULJ reasoned:

It is credible that McConnell considered certain health factors when she declined a COVID-19 vaccine but was less credible

that she was prevented from receiving the vaccine because of sincerely held religious beliefs. McConnell stated she chose not to comply with COVID-19 vaccination because it was in its early stages, not tested, and the health risks for her seemed to outweigh the benefits. . . . The most likely explanation is that McConnell would have received the COVID-19 vaccine if it had been around for a longer period of time and undergone additional testing. This is not a religious . . . reason.

In sum, I would conclude that, although it implicates constitutional rights, this appeal, like many others, turns on a credibility determination that is supported by the record. As such, I believe that precedent requires that we defer to the ULJ's credibility determination. *See Haugen v. Superior Dev., Inc.*, 819 N.W.2d 715, 723 (Minn. App. 2012) (stating that "we must defer to the ULJ's factually supported credibility determination"); *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (recognizing deference owed to ULJ credibility findings).

I therefore respectfully dissent.